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ABSTRACT

Cable Television franchises in 20 Florida communities were analyzed to determine rates and citizens' rights of access as required by FCC regulations. It was found that rates ranged from $4.95 to $8.75, with the average monthly service at $5.65. Fees had little to do with an overall citizens' rights; the companies with higher rates generally made no provisions for citizens' rights. Local government officials have rarely requested opportunities for citizens' services. Rates, number of subscribers, dates of franchise, and amount of citizen access are shown in charts. (SK)

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CABLE TELEVISION FRANCHISING IN FLORIDA:

An Analysis of Selected Franchises

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Cable Television Franchising in

the State of Florida

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While it is generally agreed that there is a need for the regulation of cable television, the level and extent of of this jurisdiction is a matter of some controversy. Under the 1973 Federal Communications Commission's Report and Order, certain minimum standards were set for local franchising as a means of cable television regulation. These include the length of a franchise and 'reasonability' of charges for services. While somewhat unspecific, this was the first positive step taken on the federal level to regulate cable television.

Local Regulation of Cable Television

In the absence of comprehensive state and federal regulation, municipalities have played the predominant public role in shaping the growth of cable television through their somewhat limited and restrained attempts at regulation.

By virtue of occupying a right-of-way along a public street, cable television systems are placed under the jurisdiction of a city or county governing body. There is no uniformity of interpretation as to the rights of a local government with respect to cable television. The degree of control depends largely upon the franchise, its holder and the governing body that awarded the franchise. The control in

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the franchise may range from simple pole rental fees to a high percentage of gross revenues and promised community services.

Until recently a cable television franchise was relatively easy to obtain. Promotional materials, legal costs and seldom more than a few weeks of negotiation with local officials were the only prerequisites involved in the awarding of the franchise by a local governing body. Local officials blatantly displayed a lack of concern and a total lack of knowledge about cable television and its role in a community. Therefore, many cable companies secured lucrative, long-term franchising agreements to provide a limited cable service. All of this was usually completed without any public attention whatsoever.

Most cable television franchises now in effect are not the products of competitive bidding. The franchises were generally "awarded" to the first company that applied. Long-term, loosely binding and vaguely written ordinances were given with little regard for possible community services, service quality and/or economic implications. Cable companies which might have offered superior services were denied the opportunity and the public right to seek the best arrangement was ignored.

Cable franchises have been repeatedly awarded with little deliberation or negotiation. Local governing bodies moved quickly on cable largely because they did not recognize the importance and implications of such a system. They did not

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study the potential of cable television and its relatinoship to the public needs and activities. They lacked the foresight to act in the public interest.

Numerous franchises have been obtained merely on a speculative basis, especially during the first years of cable teleivsion. Companies secured the licenses for cable television wiring for investment purposes only, for later developments or possible resale. A few franchises have been issued to firms with little technical or financial competency and no intention of creating a cable system. Franchises have been awarded in areas too small for a profitable cable system, but which could be later tied into larger cable systems. (This is a problem today with some systems in which the owners are unwilling to invest time and money in their area as they are waiting to "tie in" with a larger system.)

When a local government grants a franchise to a speculator who intends to sell out to another company or to await a more favorable marketing situation, it is bestowing a publicly created value on a private individual. In exchange, it is getting nothing more than a delay in starting a local cable television system that could possible serve the community.

The potential communication services that cable television could bring to a community is almost unlimited. Cable television systems will revolutionize communication. It seems that a lack of concern and of farsightedness have

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prevented the communities from obtaining through franchising agreements the services to which they are entitled. Early franchises were awarded as if to placate the cable companies and to avoid the problems of studying and understanding the cable systems. As a result of this, little or no services were required of the cable systems and the local governments cannot make any changes until the expiration of the franchises, which were normally quite long term agreements. Many opportunities were lost due to the avoidance of responsible decision making and the general ignorance of the community governing bodies. These bodies failed to realize the needs of the community and did not insist upon the rights of the people they represented.

Citizens' Rights and Cable Television

Robert Pepper outlined what he called "citizens' rights" with respect to cable television.* These rights were divided into seven broad categories as follows: (1) citizen participation and due process; (2) right to know; (3) nondiscriminatory access to cable television services; (4) nondiscriminatory training and hiring; (5) public access and leased channels; (6) consumer rights; and (7) privacy.

Twenty-one franchises have been chosen from those in the state of Florida and have been analyzed with respect to citizens' rights and cable television. All franchises were analyzed for

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* "Citizen Rights and Cable Television," for the Wisconsin Commission on Cable Communications, July, 1972.

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each of the seven categories and then given an overall rating. Table I in the Appendix is a summary of the findings.*

The franchises were judged as "comprehensive," "limited," "negative," or "no provision" in each category. A comprehensive provision means that the franchise contained protection and/or enforcement of virtually all of the specified rights. Limited provisions means that the franchise had some positive protections and/or enforcments but fell short in providing thorough protection. A negative provision means that for that specific category the franchise contained a provision that prohibits or inhibits the protection and/or enforcement of the category's citizen-consumer rights. No provision means that the franchise or ordinance did not consider in any way the citizen-consumer rights in the category.**

What follows is an outline of the ideal citizen-consumer rights for cable television developed by Pepper and used in this franchise analysis. It must be noted that these are ideal rights and are not applicable in all instances.

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* The franchises analyzed herein were provided by the Florida League of Cities, Inc., Tallahassee, Florida, in July, 1973. Any changes or additions since that time will not be noted in this study.

** The measures used in this analysis are the same as those employed by Pepper in Wisconsin.

Citizens' Rights

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I. Citizen Participation/Due Process

A. Hearings and public notice on,

1. Terms of the cable ordinance
2. All applications and bids received from potential operators, including the financial suitability of the applicants
3. Rate determination and/or rate changes
4. Periodic operations review
5. Franchise renewal
6. Franchise termination
7. Franchise revocation
8. Transfer of control of franchise, whether by sale, merger, or other means

B. Subscriber initiated revocation proceedings

II. Right to Know

A. Access to operator information to include:

1. A copy of the city ordinance, state and federal cable regulations, and copies of the system's certificate of compliance
2. A copy of the system's license or franchise agreement
3. A copy of the operator's original application for a franchise from the municipality
4. A copy of all types of subscriber agreements used by the operator
5. A copy of all operator rules
6. All correspondence between the operator and all regulatory agencies
7. All correspondence between the operator and any government official, including law enforcement officials

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8. A list of all stockholders holding 5% or more of the franchise's voting stock
9. A list of all directors and officers of the franchisee, with addresses and phone numbers
10. The names, addresses, and phone numbers of the local system manager and the chief engineer
11. A copy of all annual stockholder reports
12. Annual financial statements prepared by a certified public accountant
13. All technical and physical construction plans and maps
14. A log of all requests for public access and/or leased channel time with the disposition of the request
15. A log of all requests by bona fide candidates for time
16. A log of all requests for service and their disposition
17. Logs and copies of all complaints, with the time required for response and service performance
18. Logs of all signals and programs carried

B. Access to franchisor information to include:

1. All correspondence, applications, bids and related material for all applications, both accepted and rejected
2. All rules, operation procedures, application procedures, reports, results of examinations, etc.
3. All final orders, statements of policy, and administrative and staff operating procedures
4. The names and addresses of all members of the franchising/regulatory authority
5. The voting records of every member of the franchising/regulatory authority
6. Minutes of all meetings of the franchising/regulatory authority
7. All rules, terms, agreements, conditions, and regulations promulgated by the franchising authority
8. A list of all citizen rights pertaining to cable communications

C. Franchisee published materials to include:

1. All rate schedules
2. A weekly program guide listing all known content for the coming week, with the exception of re-transmitted broadcast signals
3. The address and phone number of the local office

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4. The addresses and phone numbers of the local manager and chief engineer
5. A list of all citizen rights related to cable
6. A reminder of the complaint procedures and how they work
7. Instructions on how to operate terminal switching equipment
8. A copy of the operator-municipality franchising agreement
9. Copies of all types of available subscriber agreements
10. A list of franchise officers and directors, with addresses
11. In plain language, what is required of the operator by law
12. Annual report of the system's operations including profit and loss statements and complaint and service summaries

D. Franchisor published materials to include:

1. An explanation, in lay terms, of the franchising and cable regulatory process
2. The names and addresses of those directly involved in cable regulation
3. A list of all citizen-consumer rights pertaining to cable television franchising, regulation and operation
4. Notice of acceptance of applications
5. Notice of all hearings dealing with cable
6. Notice of all meetings of the franchising authority
7. Notice of all bids received, including from whom
8. All terms of franchise before it may be approved

III. Nondiscriminatory access to cable television services with respect to:

A. Geographical discrimination

B. Economic, racial, religious, sexual or other discrimination

C. Rates, services and rules

D. Anyone preventing cable receptions (i.e., recalcitrant landlords)

IV. Nondiscriminatory training and hiring

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V. Public access and leased channels

A. Provisions for public access channels

B. Public access/leased channels--nondiscriminatory, first come access

C. No censorship by cable operator

D. Right to reply on leased channels

E. Free facilities for public access

VI. Consumer rights

A. Hook-up/cancellation rights

1. Operators cannot require security deposits or advance payments without prior permission from franchising authority, and then only after due process
2. Subscriber should have choice of either buying or leasing terminal connection equipment
3. Subscriber should be able to terminate subscription without any charge or penalty
4. Operator must supply switchboard device between cable system and subscriber's antenna
5. Upon termination of service, operator must re-connect subscriber's antenna
6. If the subscriber moves within the franchise area, the operator must reconnect terminal at new address without charge
7. Upon termination of service, operator must remove all equipment from subscriber's premises if requested

B. System operation rights

1. System must be designed as to not create any electrical interference with broadcast signal
2. Interruption of service must be at time causing least amount of inconvenience to customer and must be notified in advance
3. System should be designed and staffed 24 hours daily
4. Cable system construction or excavation sites must be protected against danger to public
5. Subscriber involvement in broadcast signal selection and in cable services selection should be solicited

C. Service and complaint procedures

1. Operator should have local office in franchising area, open during normal business hours and a complaint number open 24 hours a day
2. Requests for cable installation must be filled in 7 days
3. Operator must have published complaint procedures
4. Requests for service (except initial hook-up) should be filled within 48 hours of receipt
5. Record of all requests for service and how and when filled must be kept in an open public file

D. Subscriber refunds and reduced costs

1. Subscriber should be refunded prorated fee for interruption of service for any reason
2. If operator terminates service within two years of installation for any reason, or if subscriber cancels within 18 months of installation for failure of operator to live up to franchise or subscriber to agreement, operator must refund to subscriber initial installment charge
3. If, as a result of regulation or technological developments (other than natural growth of system), operator's costs and/or expenses are reduced, the operator should pass savings to subscriber in either reduced rates or increased services

VII. Privacy

A. Prohibited wire tapping

B. Prohibited information accumulation and/or correlation

1. No terminal monitoring permitted without specific written authorization by subscriber for the specific occasion
2. Polled surveys are to be conducted so as to protect the identity of the subscriber
3. Operators not permitted to correlate subscriber information without specific written subscriber authorization
4. Police surveillance by cable television should be limited to vehicular traffic only, except where a subscriber requests in writing that his home or office be monitored for security

5. Landlords cannot request surveillance of property leased without permission of tenant in writing
6. Operators cannot release any information they have collected without written permission, except for general population data protecting the individual subscriber's identity

C. Devices preventing wire tapping

D. Devices preventing unauthorized information collection

1. A device that notifies the subscriber that his terminal is about to be polled should be required at all terminals
2. Every terminal should be equipped with a subscriber controlled deactivation switch for terminating and/or preventing terminal monitoring, regardless of prior subscriber agreements

Findings

Citizen Participation/Due Process

The rights of this category are divided into two sections, however an analysis of each franchise for the specific sections was unnecessary. Of the 21 franchises analyzed in this category, 86 percent (18) had no provisions whatsoever for citizen participation in the cable television proceedings. Two franchises did have limited provisions which included public hearings on rate revision in one and public hearings on termination and revocation proceedings in the other. Only one city, Sunrise Golf Village, have franchise provisions which could be termed comprehensive in this category. This particular franchise contained provisions specifying public hearings on revocation, termination, transfer and rate revision procedures.

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It should be noted here that although all franchises examined contained provisions regarding the transfer, termination and/or revocation of the franchise, most of them did not specify public hearings on such.

Of special interest is the fact that not one franchise analyzed in this project contained provisions for subscriber-initiated revocation procedures. All franchise information tends to point to the fact that the governing bodies did not feel that citizen participation in the franchising process was necessary or would be beneficial. The problems of franchising are left entirely up to the local government with no citizen input in almost all instances.

Right to Know

This section of citizens' rights is divided into four major categories: (1) access to operator information; (2) access to franchisor information; (3) franchisee published materials; and, (4) franchisor published materials.

Here again the provisions found in the Florida franchises analyzed were so minimal as to make section analysis unnecessary.

In 57 percent of the franchises reviewed no provisions were found for the right to know category. Five of the ordinances contained limited provisions,usually involving the availability of maps and plots of the construction work.

Four franchises did contain comprehensive rights, providing for public access to most information, financial status,

correspondence, etc. (It is of special interest to note that three of the four cable television systems that hold franchises containing comprehensive right to know provisions are owned by Teleprompter and three of the four with these comprehensive provisions were adopted prior to 1969.)

The analysis of the cable television franchise for Williston revealed an unusual provision. The city of Williston agreed to provide one full-time city employee (at its own cost) to help the cable company for a period of one year. No provisions were made for a reimbursement of the money involved in this sharing of an employee and any benefits to be received by the city itself were not in the franchise.

Nondiscriminatory Access of Cable Television Services

Of the 21 franchises examined, 38% contained no provisions of nondiscriminatory in service. Three contained limited provisions, all prohibiting geographical discrmination. The remaining ten franchises contained comprehensive provisions with respect to nondiscriminatory access to cable television.

Nondiscriminatory Training and Hiring

None of the franchises involved in this analysis contained provisions concerning nondiscriminatory training and hiring. The franchise of Palm Springs contained a clause that allowed the cable company to set its own rules and regulations for the 'most efficient service.' Whether this covers discrimination of any kind is open to deliberation.

Public Access and Leased Channels

In all of the franchises studied, no mention of censorship, right to reply or nondiscriminatory use of channels was found. Therefore, there were no franchises with comprehensive provisions in this category.

Five franchises had limited provisions. Only one of those went into detail regarding public access facilities; the other four had provisions specifying only a free non-commercial channels. (There was no definition or explanation of the term "non-commercial channel" in any of the franchises.)

Seventy-six percent (16) of the franchises had no provisions for public access and/or leased channels.

Consumer Rights

The consumer rights section of the citizens' rights was divided into four categories: (1) hook-up cancellation rights; (2) system operation rights; (3) service and complaint procedures; and, (4) subscriber refunds and reduced costs.

Under hook-up and cancellation rights, only provisions regarding security deposits and removing equipment upon service termination were found in the franchises. Provisions for not creating electrical interference and interruption of service were the only ones found under the heading system operation rights.

The following provisions were the only ones found for service and complaint procedures: (1) operator should have local office in franchise area open during normal business horus and a complaint number manned 24 hours a day; and (2) requests for service should be filled within 48 hours. (The term 'should' is not binding and therefore an ambiguous provision.)

The only provision for subscriber refunds and reduced costs was that the subscriber should be refunded prorated fee for interruption of service for any reason.

Fourteen of the franchises, or 67 percent, contained no provisions concerning consumer rights. There were no franchises with comprehsnive provisions found in this analysis. For those with some provisions, there was no uniformity of provisions under Consumer Rights and those that were included in a franchise were minimal. Thirty-three percent of the franchises contained limited provisions, ranging from five of the consumer rights above to only removing equipment upon service termination.

Thus, it can be seen that the franchises in the state of Florida involved in this study contained few, if any, consumer rights and were not designed for the benefit of the consumer, but of the franchise holder.

Privacy

There were no provisions for privacy in any of the franchises. These provisions are, of course, not as important for cable in its present state as they will be in the future. Here again, governing bodies failed to realize the potential

of cable communications. Franchises have been awarded for long terms and have no provisions for the privacy of the subscribers. When cable technology reaches the point at which the individual feels his privacy is being invaded, he will not be able to turn to the franchise for help as it totally ignores the issue of privacy.

Summary

In Table II the dates of the franchises examined, monthly charges, owners and number of subscribers are presented. While the monthly rates vary from $8.75 in Key West to $4.95 in other areas of the state, the average monthly service charge for cable television is $5.65. By owner, Teleprompter has consistently lower monthly rates in the franchises analyzed than did the other cable companies.

When monthly charges were compared with overall citizens' rights provisions, it was found that the fee had little to do with the rights in the franchise. In fact, those with the higher monthly charges in this analysis were the cable companies with an overall rating of "no provisions" for citizens' rights.

Monthly charges were the highest in Key West ($8.75), Valparasio ($6.95) and in Tallahassee ($6.50), all of which contained no citizens' rights for cable television.*

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* The franchise for Valparasio did contain a vaguely written provision for public hearings on franchise revocation. However, this was the only citizens' right found. It received an overall rating of "no provisions."

The length of the franchises ranged from ten to thirty years, with an average of 20½ years for a franchise. Of the eight franchises that were for 25 years or more, half contained an overall rating of "limited provision" for citizens' rights and the other half,"no provisions" as a rating. Although Teleprompter owned three of the long term franchises, these were among the ones that contained provisions for citizens' rights.

While Teleprompter has the longest franchises of those analyzed and the lowest rates, it does contain citizens' rights in many areas and all four of their franchises employed in this study received "limited provision" ratings. (Of the ten franchises in the study that received "limited" ratings, Teleprompter owned four.) The franchise for Tequesta, held by Teleprompter, contained more citizens' rights than any other franchises analyzed.

The only system with an above average monthly fee that contained enough citizens' rights to be labelled "limited" overall was the franchise for Sunrise Golf, held by American Video. The other three franchises with the lowest rates reported, $4.95, were those with "limited provisions."

The overall analysis of the franchises of the state of Florida seems to indicate that the officials at the local level have repeatedly ignored the rights and privileges of the citizens.

They have performed their duties without regard for their constituency. The date of the franchise, its owner (with the exception of Teleprompter) and even the monthly rate are in no way indicators of the citizens' rights that can be found in the franchise.

It appears that local governments are not learning from past experiences of others and themselves, but are merely carrying on a "tradition" of ignorance and are neglecting many possibilities. Many opportunities have been missed and possibilities for citizen services have been neglected; citizens' rights with regard to cable television have been denied.

Table I

CITIZENS' RIGHTS WITH REGARD TO CABLE TELEVISION FRANCHISING

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Community	I	II	III	IV	V	VI	VII	Overall
Sunrise Golf	Comp	No	Limited	No	Limited	Limited	No	Limited
Valparasio	Limited	No	No	No	No	No	No	No
Williston	No	No	No	No	No	No	No	No
Ormond Beach	No	Limited	Comp	No	No	No	No	Limited
Palm Springs	No	Comp	Comp	No	Limited	Limited	No	Limited
Treasure Island	No	Comp	Comp	No	Limited	Limited	No	Limited
Magnolia Park	No	Limited	Comp	No	No	Limited	No	Limited
Punta Gorda	No	Comp	Comp	No	No	Limited	No	Limited
Tallahassee	No	No	No	No	No	No	No	No
Key West	No	No	No	No	No	No	No	No
Sanford	No	Limited	Limited	No	No	Limited	No	Limited
Ocala	No	No	No	No	No	No	No	No
Miami Springs	No	No	No	No	Limited	No	No	No
St. Petersbury	No	Limited	Comp	No	No	Limited	No	Limited

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Community	I	II	III	IV	V	VI	VII	Overall
Leesburg	No	No	Comp	No	No	No	No	No
Sarasota	No	No	No	No	No	No	No	No
Palm Bay	No	No	Comp	No	No	No	No	No
Rockledge	No	No	Comp	No	No	No	No	No
Parker	No	No	No	No	No	No	No	No
Tequesta	No	Limited	Limited	No	Limited	Limited	No	Limited
Marianna	No	Comp	Comp	No	No	Limited	No	Limited

Table II

GENERAL INFORMATION CONCERNING A SELECTED SAMPLE OF CABLE TELEVISION FRANCHISES IN THE STATE OF FLORIDA*

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Community	Number of Subscribers	Franchise Dates	Owners	Monthly rates
Sunrise Golf	7,231	1969-1999	American Video	$5.95
Valparasio	14,342	1966-1976	Warner Cable	$6.95
Williston	554	1965-1977	Storer Broadcasting	$5.95
Ormond Beach	5,429	1962-1980	A T & C	$4.95
Palm Beach	400	1968-1998	Teleprompter	$4.95
Treasure Island	970	1971-2001	Teleprompter	$4.95
Magnolia Park		1969-1999	Teleprompter	
Marianna	1,300	1967-1979	Teleprompter	$5.00
Punta Gorda	(refused to give out info)	1966-1981	Gulf Coast Teleception	
Tallahassee	15,000	1966-1976	Westinghouse Electric	$6.50
Key West	12,586	1965-1985	Cable-vision Inc.	$8.75
Sanford	14,000	1970-1980	Seminole CTV	$4.95
Ocala	6,750	1960-1985	Cox Cable Corp.	$5.95
Miami Springs		1970-2000	Coaxial Communication	$5.00

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Community	Number of Subscribers	Franchise Dates	Owners	Monthly rates
St. Petersburg	900	1971-1991	TM Communication	$4.95
Leesburg	2,500	1968-1983	Lebhar Friedman	$5.95
Sarasota	15,849	1971-1992	Storer Broadcasting	$5.00
Palm Bay		1965-1980	Florida TV Inc.	
Rockledge	3,800	1964-1979	A T & C	$5.25
Parker		1968-1998	Westinghouse Electric	
Tequesta	4,000	1969-1991	Teleprompter	$4.95

* It should be noted that the twenty-one franchises were chosen in an attempt to represent all market sizes, all areas of Florida, and different ownership.